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Capital master plan

Report of the Secretary-General

Addendum

Summary

The present addendum to the report of the Secretary-General (A/59/441) is issued to provide further information on the capital master plan.

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Opinion of the United Nations Legal Counsel on the process for accepting the offer of the Government of the United States of America to borrow up to $1.2 billion to finance the capital master plan

1. During the discussion in the Fifth Committee of the report of the Secretary-General on the capital master plan (A/59/441 and Add.1), a request was made to the Secretariat to provide a written statement from the Office of Legal Affairs on the process for accepting the offer of the Government of the United States of America to borrow up to $1.2 billion to finance the plan.

2. The overall process involves an offer from the United States Government to loan $1.2 billion to the United Nations to finance the capital master plan. The United States Government has requested the United Nations to indicate whether it wishes to accept the offer, which is contained in three letters (20 February 2004, 24 February 2005 and 15 March 2005). These letters set out the basic terms of the agreement.

3. If the Organization determines to accept the offer of the loan, it would indicate its intention in a letter to the United States Government and would subsequently enter into negotiations with the United States Government to conclude an agreement between the Organization and the United States Government. The United States Government has made clear that this offer will expire if no agreement is concluded by 30 September 2005.

4. The letter from the Organization to the United States Government expressing the intention to accept the offer of the loan would set out the basic terms and understandings for the loan agreement to be negotiated and provide that the acceptance of the offer is subject to the successful conclusion of the loan agreement. Thus, the letter creates no legal obligations for the Organization regarding the offer of the United States Government.

5. The basic terms and understandings that would be set out in the letter to the United States Government would include the terms set out in the three letters from the United States Government setting out the offer. As indicated in the addendum to the report of the Secretary General (A/59/441/Add.1), the Administration is prepared to accept those terms. However, the letter would also include the two understandings set out in paragraph 39 of the addendum and an additional understanding. The two understandings set out in paragraph 39 are as follows:

(a) The agreement does not create for the United Nations any legal or financial obligation to borrow any part of the $1.2 billion from the host country or in any way restrict the Organization's discretion in deciding whether to borrow such funds;

(b) The agreement does not restrict the authority and the discretion of the United Nations to seek funds for the same purposes from any other source if the Organization chooses to do so.

6. The additional undertaking that would be included in the letter is that the agreement would permit the Organization to utilize the commitment of the United States Government to provide funds under the loan as a guarantee or collateral for obtaining funds for the implementation of the capital master plan at lower interest

rates than those provided in the loan agreement and otherwise permit the Organization to benefit financially from the temporary depositing of funds disbursed to the Organization under the loan agreement in banks or other financial institutions.

7. The loan agreement with the United States Government would have to be concluded and signed no later than 30 September 2005, otherwise the offer is withdrawn. The Secretary-General would advise the General Assembly in a timely manner if, for whatever reason, it develops that the Organization and the United States Government are unable to conclude the loan agreement consistent with the basic terms and undertakings as described above.

8. As provided in the aforementioned addendum to the report of the Secretary-General, if such a loan agreement is successfully concluded, the Organization would be obligated to respect the terms relating to the repayment of any funds disbursed under the loan agreement, as provided in the letters from the United States Government containing the offer and the proposed letter from the Organization indicating the intention to accept the offer. Moreover, as indicated in the addendum, the Secretary-General would first seek the approval of the General Assembly before drawing funds under that agreement. If the Organization does not draw down any funds under the loan, it would incur no obligation under the agreement.